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DISCRIMINATION AGAINST INDIGENOUS PEOPLES

Draft declaration on the rights of indigenous peoples

Revised working paper submitted by the Chairperson-Rapporteur, Ms. Erica-Irene Daes, pursuant to Sub-Commission resolution 1992/33 and Commission on Human Rights resolution 1993/31

Introduction

In its resolution 1992/33 of 27 August 1992, the Sub-Commission on Prevention of Discrimination and Protection of Minorities recommended that the Chairperson-Rapporteur of the Working Group on Indigenous Populations, Ms. Erica-Irene Daes, be entrusted with the task of further elaborating the paragraphs of the draft declaration on the rights of indigenous peoples which were agreed upon at second reading and circulating these paragraphs to the members of the Working Group for their comments. In the same resolution the Sub-Commission requested the Secretary-General to transmit the revised and reorganized text of the draft declaration, prepared pursuant to paragraph 5 of the resolution, to Governments, indigenous peoples, and intergovernmental and non-governmental organizations. The Commission on Human Rights, in its resolution 1993/31 of 5 March 1993, welcomed the recommendation of the Sub-Commission that the Chairperson-Rapporteur be entrusted with the task of further elaborating the paragraphs of the draft declaration which were agreed upon at second reading, taking into consideration, inter alia, the comments of Governments, indigenous people's organizations and other interested parties. The text which follows constitutes the revised working paper submitted by the Chairperson-Rapporteur, Ms. Erica-Irene Daes.

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PREAMBULAR AND OPERATIVE PARAGRAPHS OF THE DRAFT DECLARATION AS AGREED UPON BY THE MEMBERS OF THE WORKING GROUP AT FIRST READING AND REVISED BY THE CHAIRPERSON-RAPPORTEUR, MS. ERICA-IRENE DAES

First preambular paragraph

Affirming that indigenous peoples are equal in dignity and rights to all other peoples, while recognizing the right of all individuals and peoples to be different, to consider themselves different, and to be respected as such,

Second preambular paragraph

Considering that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

Third preambular paragraph

Reaffirming that all doctrines, policies and practices based on racism and racial, religious, ethnic or cultural superiority are scientifically false, legally invalid, morally condemnable and socially unjust,

Fourth preambular paragraph

Reaffirming also that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

Fifth preambular paragraph

Concerned that many indigenous peoples have been deprived of their human rights and fundamental freedoms, resulting, inter alia, in the dispossession of their lands, territories and resources, as well as in their poverty and misery,

Sixth preambular paragraph

Recognizing the urgent need to respect and promote the inherent rights and characteristics of indigenous peoples, especially their rights to their lands, territories and resources, which derive from their cultures, spiritual traditions, histories and philosophies, as well as from their political, economic and social structures,

Seventh preambular paragraph

Welcoming the fact that indigenous peoples are organizing themselves in order to bring an end to all forms of discrimination and oppression wherever they occur,

Eighth preambular paragraph

Convinced that increasing the control of indigenous peoples over development affecting them and their lands, territories and resources will enable them to continue to strengthen their institutions, cultures and traditions, as well as to promote their development in accordance with their aspirations and needs,

Ninth preambular paragraph

Recognizing also that respect for indigenous knowledge and practices contributes to sustainable development and management of the environment,

Tenth preambular paragraph

Emphasizing the need for demilitarization of the lands and territories of indigenous peoples, which will contribute to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

Eleventh preambular paragraph

Reaffirming the importance of giving special attention to the rights and needs of indigenous elders, women, youth, children and disabled,

Twelfth preambular paragraph

Recognizing in particular that it is in the best interest of indigenous children for their families and communities to retain shared responsibility for their upbringing, training and education,

Thirteenth preambular paragraph

Believing that indigenous peoples have the right freely to determine their relationships with States in a spirit of coexistence,

Fourteenth preambular paragraph

Considering that treaties, agreements and other constructive arrangements between States and indigenous peoples continue to be matters of international concern and responsibility,

Fifteenth preambular paragraph

Noting that the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights affirm the fundamental importance of the right of self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

Sixteenth preambular paragraph

Bearing in mind that nothing in this Declaration may be used as a pretext to deny any peoples their right of self-determination,

Seventeenth preambular paragraph

Encouraging States to comply with and effectively implement all international instruments as they apply to indigenous peoples, in consultation and cooperation with the peoples concerned,

Eighteenth preambular paragraph

Believing that this Declaration is a first step in the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

Nineteenth preambular paragraph

Solemnly proclaims the following Declaration on the Rights of Indigenous Peoples:

PART I

Operative paragraph 1

Indigenous peoples have the right to the full and effective enjoyment of all human rights and fundamental freedoms recognized in the Charter of the United Nations and in international human rights law;

Operative paragraph 2

Indigenous peoples are free and equal to all other human beings and peoples in dignity and rights, and have the right to be free from discrimination of any kind based on their indigenous origin or identity;

Operative paragraph 3

Indigenous peoples have the right of self-determination, in accordance with international law, subject to the same criteria and limitations as apply to other peoples in accordance with the Charter of the United Nations. By virtue of this, they have the right, inter alia, to negotiate and agree upon their role in the conduct of public affairs, their distinct responsibilities and the means by which they manage their own interests.

An integral part of this is the right to autonomy and self-government;

Operative paragraph 4

Indigenous peoples have the right to participate fully in the political, economic, social and cultural life of the State while maintaining their distinct political, economic, social and cultural characteristics;

PART II

Operative paragraph 5

Indigenous peoples have the collective right to exist in peace and security as distinct peoples and to be protected against any type of genocide.

Consequently, they have the individual rights to life, physical and mental integrity, liberty and security of person;

Operative paragraph 6

Indigenous peoples have the collective and individual right to be protected against ethnocide and cultural genocide, including the prevention of and redress for:

(a) Removal of indigenous children from their families and communities under any pretext;

(b) Any action which has the aim or effect of depriving them of their integrity as distinct societies, or of their cultural or ethnic characteristics or identities;

(c) Any form of forced assimilation or integration by imposition of other cultures or ways of life;

(d) Dispossession of their lands, territories or resources;

(e) Any propaganda directed against them;

Operative paragraph 7

Indigenous peoples have the collective and individual right to maintain and develop their distinct characteristics and identities, including the right to identify themselves as indigenous;

Operative paragraph 8

The right of an indigenous person to belong to an indigenous nation or community is a matter of his or her individual choice and no disadvantage of any kind may arise from the exercise of such a choice;

Operative paragraph 9

Indigenous peoples shall not be forcibly removed from their lands or territories. Where relocation occurs, it shall be with the free and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return;

Operative paragraph 10

Indigenous peoples have the right to special protection and security in periods of armed conflict. States shall observe international standards for the protection of civilian populations in circumstances of emergency and armed conflict, and shall not:

(a) Recruit indigenous people against their will into the armed forces and, in particular, for use against other indigenous peoples;

(b) Recruit indigenous children into the armed forces under any circumstances;

(c) Force indigenous people to abandon their lands and territories and means of subsistence and relocate them in special centres for military purposes;

PART III

Operative paragraph 11

Indigenous peoples have the right to revitalize and practise their cultural traditions. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archeological and historical sites and structures, artefacts, designs, ceremonies, technologies and visual and performing arts and literatures, as well as the right to the restitution of cultural, religious and spiritual property taken without their free and informed consent or in violation of their laws;

Operative paragraph 12

Indigenous peoples have the right to manifest, practise and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to religious and cultural sites; the right to the use and control of ceremonial objects; and the right to the repatriation of human remains. States shall take effective measures to preserve, respect and protect the sacred places and cemeteries of indigenous peoples;

Operative paragraph 13

Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their languages, oral traditions, writing systems and literatures, and to designate and maintain their own names for communities, places and persons. States shall take effective measures to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means;

PART IV

Operative paragraph 14

Indigenous peoples have the right to all levels and forms of education, including access to education in their own languages, and the right to establish and control their educational systems and institutions;

Operative paragraph 15

Indigenous peoples have the right to have the dignity and diversity of their cultures, traditions, histories and aspirations reflected in all forms of education and public information. States shall take effective measures, in consultation with indigenous peoples, to eliminate prejudice and to promote tolerance, understanding and good relations;

Operative paragraph 16

Indigenous peoples have the right to the use of and access to all forms of media in their own languages;

PART V

Operative paragraph 17

Indigenous peoples have the right to participate fully at all levels of decision-making in matters which may affect their rights, lives and destinies through representatives chosen by themselves in accordance with their own procedures;

Operative paragraph 18

Indigenous peoples have the right to participate fully, through procedures determined in consultation with them, in devising legislative and administrative measures that may affect them. States shall obtain the free and informed consent of the peoples concerned before implementing such measures;

Operative paragraph 19

Indigenous peoples have the right to maintain and develop their economic and social systems, to be secure in the enjoyment of their own means of subsistence, and to engage freely in their traditional and other economic activities, including hunting, fishing, herding, gathering, forestry and cultivation. Indigenous peoples who have been deprived of their means of subsistence are entitled to just and fair compensation;

Operative paragraph 20

Indigenous peoples have the right to special measures for the immediate, effective and continuing improvement of their economic and social conditions, including in the areas of employment, vocational training and retraining, housing, health and social security.

Attention shall be paid to the special needs of indigenous elders, women, youth, children and disabled;

Operative paragraph 21

Indigenous peoples have the right to determine and develop priorities and strategies for their development. In particular, indigenous peoples have the right to determine and develop all health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions;

Operative paragraph 22

Indigenous peoples have the right to their traditional medicines and health practices, including the right to the protection of vital medicinal plants, animals, and minerals;

PART VI

Operative paragraph 23

Indigenous peoples have the right to recognition of their distinctive and profound relationship with their lands and territories. The use of the term "lands and territories" in this Declaration means the total environment of the lands, air, water, sea, sea-ice, flora and fauna and other resources which indigenous peoples have traditionally owned or otherwise occupied or used;

Operative paragraph 24

Indigenous peoples have the collective and individual right to own, control and use their lands and territories. This includes the right to the full recognition of their laws and customs, land-tenure systems and institutions for the management of resources, and the right to effective measures by States to prevent any interference with or encroachment upon these rights;

Operative paragraph 25

Indigenous peoples have the right to the restitution of lands and territories which have been confiscated, occupied, used or damaged without their free and informed consent and, where this is not possible, to just and fair compensation. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands and territories at least equal in quality, size and legal status;

Operative paragraph 26

Indigenous peoples have the right to the recreation and protection of the total environment and the productive capacity of their lands and territories, as well as to assistance for this purpose from States and through international cooperation. Military activities and the storage or disposal of hazardous materials shall not take place in the lands and territories of indigenous peoples, unless otherwise freely agreed upon by the peoples concerned;

Operative paragraph 27

Indigenous peoples have the right to special measures to protect, as intellectual property, their sciences, technologies and cultural manifestations, including genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs and visual and performing arts;

Operative paragraph 28

Indigenous peoples have the right to require that States obtain their free and informed consent prior to the commencement of any projects on their lands and territories, particularly in connection with natural resource development or exploitation of mineral or other subsurface resources. Pursuant to agreement with the indigenous peoples concerned, just and fair compensation shall be provided for any such activities and measures taken to mitigate adverse environmental, economic, social, cultural or spiritual impact;

PART VII

Operative paragraph 29

Indigenous peoples have the right to autonomy and self-government in matters relating to their internal and local affairs, including culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, land and resources management, environment and entry by non-members, as well as internal taxation for financing these autonomous functions;

Operative paragraph 30

Indigenous peoples have the right to determine the structures and to select the membership of their autonomous or self-governing institutions in accordance with their own procedures;

Operative paragraph 31

Indigenous peoples have the right to retain and develop their customs, laws and legal systems, in a manner not incompatible with universally recognized human rights and fundamental freedoms, and to have these recognized in the legal system and political institutions of the State;

Operative paragraph 32

Indigenous peoples have the right to determine the responsibilities of individuals to their communities in a manner not incompatible with universally recognized human rights and fundamental freedoms;

Operative paragraph 33

Indigenous peoples have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with other indigenous peoples across borders;

Operative paragraph 34

Indigenous peoples have the right to the observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors, according to their original intent. Upon the request of the indigenous peoples concerned, States shall provide for the submission of disputes which cannot otherwise be settled to competent international bodies;

PART VIII

Operative paragraph 35

States shall take effective and appropriate measures, in consultation with the indigenous peoples concerned, to give full effect to the provisions of this Declaration. The rights contained herein shall be adopted and included in national legislation in such a manner that indigenous peoples can avail themselves of such rights in practice;

Operative paragraph 36

Indigenous peoples have the right to adequate financial and technical assistance, from States and through international cooperation, to pursue freely their political, economic, social, cultural and spiritual development, and for the enjoyment of the rights and freedoms contained in this Declaration;

Operative paragraph 37

Indigenous peoples have the right to have access to and prompt decision through mutually acceptable and fair procedures for the resolution of conflicts and disputes with States, as well as to effective remedies for all infringements of their individual and collective rights;

Operative paragraph 38

The organs and specialized agencies of the United Nations system shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial and technical cooperation;

Operative paragraph 39

The United Nations shall monitor the implementation of this Declaration through a body at the highest level with special competence in this field and with the direct participation of indigenous peoples. United Nations human rights bodies shall promote respect for the provisions of this Declaration;

PART IX

Operative paragraph 40

The rights contained herein constitute the minimum standards for the survival and well-being of the indigenous peoples of the world;

Operative paragraph 41

Nothing in this Declaration may be interpreted as diminishing or extinguishing existing or future rights indigenous peoples may have or acquire;

Operative paragraph 42

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or to the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations.